YEO SIM HUAT v. PUBLIC PROSECUTOR

[A.Cr.J. (Ismail Khan J.) October 20, 1961]

[Muar — Criminal Appeal No. 50 of 1961]

Criminal Procedure — Serious charge — How it should be explained and recorded — Qualified plea of guilty.

In a case serious enough to call for severe penalties and where accused is unrepresented every ingredient and question of the charge should be explained to the accused by the Magistrate and his replies recorded. No plea of guilty should be recorded if there is doubt that the plea is not an unequivocal plea of guilty.

Ruling in *Koh Mui Keow* v. *R.* (1) applied.

Case referred to:—

(1) *Koh Mui Keow* v. *R.* [1952] M.L.J. 214.

CRIMINAL APPEAL.

C. Paramjothy for the appellant.

Tengku Rithaudeen (Deputy Public Prosecutor) for the respondent.

Ismail Khan J.: The charge against the appellant was that he did land goods imported by sea 20 pigs from a vesssel at a place other than a legal landing place contrary to section 22(1) and (2) of the Customs Ordinance, No. 12 of 1952, and punishable under section 134 thereof.

The appellant pleaded guilty to the charge. He was fined $200, or in default two months' imprisonment. The pigs were ordered to be sold and the proceeds to be credited to revenue. The boat and 53 cages were ordered to be confiscated. The appellant appealed against conviction and sentence.

There is nothing in the record to indicate how the charge and the questions involved were explained to the appellant. It was held in the case of *Koh Mui Keow* v. *Regina,*(1) that in a case serious enough to call for severe penalties, as in this case, and where the accused was unrepresented, every ingredient and question should be explained by the Magistrate to the accused and his replies recorded, and a plea of guilty should not be recorded if there is any doubt whether the plea was an unequivocal plea of guilty.

In this case, the appellant having "admitted the facts" proceeded to say that the engine broke down and the animals had to be unloaded. This to my mind is a qualified plea of guilty and the plea of guilty should not have been entered. I therefore allowed the appeal and ordered the case to be remitted to the Sessions Court for retrial before another President.

Appeal allowed.

Solicitors: *P. T. Wong & Co.*

BAGHER SINGH v. CHANAN SINGH & ANOR.

[C.A. (Thomson C.J., Good J.A., Neal J.) October 25, 1961]

[Ipoh — Civil Appeal No. 28 of 1961]

Transfer of land to avoid judgment execution — Transferee not party to fraud — Title of transferee — Application of common law under s.3(1), Civil Law Ordinance, 1956 and s.42(ii) and (vi) of F.M.S. Land Code (Cap. 138).

The first respondent was the registered proprietor of a piece of land but the evidence disclosed, and it was accepted by the Court of first instance, that half the purchase money had been contributed by the second respondent. On July 4, 1958 the appellant obtained a judgment against the first respondent but before he could execute it, the first respondent, on July 9, 1958, executed a memorandum of transfer, for valuable consideration in favour of the second respondent. With the registration of this memorandum of transfer, the second respondent became the registered proprietor of the land. The appellant claimed a declaration that the transfer to the second respondent was fraudulent as against him. It was argued for the appellant that because there was no statute in force in the Federation of Malaya dealing specifically with conveyances in fraud of creditors, the common law should be applied under section 3(1) of the Civil Law Ordinance, 1956, or if not under this Ordinance, then under section 42(vi) of the F.M.S. Land Code.

Held: (1) that section 3(1) of the Civil Law Ordinance could be invoked only where there was a *lacuna* in the law. In the law applicable to the facts of the case, there was no *lacuna*, because section 42 of the F.M.S. Land Code made provision for fraudulent dispositions of land;

(2) the common law could not be applied under section 42(vi) of the F.M.S. Land Code in this particular instance because section 42(ii) made specific provision for such cases;

(3) as the second respondent was not a party to the fraud his title could not be defeated under the provisions of section 42(ii) and in consequence the declaration sought by the appellant could not be granted.

Cases referred to:—

(1) *The Hontestroom (Owners)* v. *The Sagaporack (Owners)* [1927] A.C. 37.

(2) *Powell* v. *Streatham Manor Nursing Home* [1935] A.C. 243.

(3) *Watt* v. *Thomas* [1947] A.C. 484.

(4) *Benmax* v. *Austin Motor Co. Ltd.* [1955] 1 All E.R. 326.

(5) *Rickards* v. *Attorney-General* 8 E.R. 1306.

(6) *Cadogan* v. *Kennet* 98 E.R. 1171.

CIVIL APPEAL.

N. Sharma for the appellant.

F. C. Arulanandom for the respondents.

Thomson C.J.: I agree with what my Lord has said.

One cannot help feeling a certain amount of sympathy for the appellant because the case is full of grounds for suspicion. For myself I am not prepared to say that had I tried it I would necessarily have come to the same conclusion as the trial Judge. Nevertheless considering the trial Judge's judgment in the light of the